S.B. Civil Writ Petition No.1518/05

Dileep Kumar Vs. State

Date of Order : 03/04/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. Manish Bhandari, for petitioner
Mr. B.K. Sharma, Dy.G.A.

With the consent of parties, the writ petition is finally heard and decided at the stage of admission.

The petitioner, who is member of SC, participated in the process of selection for the post of Sub-Inspector in pursuant to advertisement issued by the RPSC dt.5th November, 2001. He was finally selected and placed at Merit No.162 [SC] and his name was recommended for appointment to the State Government. The persons, who are lower in order of merit in SC category and participated in the process along with the petitioner, were appointed vide order dt.14th February, 2005 [Ann.3] and when this fact came to the notice of petitioner that despite being higher in order of merit, his appointment has been with-held. He made representation to the competent authority and it revealed that because of his involvement in a criminal case, which has been noticed in character verification report, his appointment has been with-

held. Hence, this petition.

Shri Manish Bhandari, counsel for petitioner submits that a criminal case FIR No.475/99 was registered against him at Police Station Bajaj Nagar, Jaipur City, Jaipur u/ss.147, 323, 427, 452 IPC, but since it was a case of false implication he was acquitted by the competent court of jurisdiction vide order dt.3rd July, 2000, copy of which has been placed on record as Ann.4 and much after acquittal, the petitioner had participated in the process of selection and the offence which was alleged against him in no manner can be construed of moral turpitude and once he has been acquitted, no legal inference can be drawn by with-holding his appointment, despite placement in higher order of merit is wholly arbitrary and so also in violation of Rule 13 of Rajasthan Police Subordinate Service Rules, 1989.

Counsel further submits that even the application form which he had filled in column No.12 the only fact which was to be disclosed by the applicant was whether he has been convicted by a court for any offence and since there was a clear acquittal, no concealment made by petitioner while filling column No.12, as such with-holding of his appointment is in clear violation of principles of

natural justice.

Respondents have filed reply to the writ petition wherein it has been averred that the fact with respect to his involvement in a criminal case was referred to in the report of Character verification and that was taken to be a basis for denial of appointment despite his selection in the order of merit. It has not been disputed that in the application form in column No.12 the only fact which was to be disclosed by the applicant was whether he has been convicted by a court for any offence.

I have considered the submission made by the counsel and perused the material on record.

This fact remain undisputed that a criminal case which was instituted against the petitioner, he was acquitted way back on 3rd July, 2000 [Ann.4] and the advertisement in pursuant to which the petitioner participated in the process of selection for the post of Sub-Inspector was in pursuant to advertisement dt.5th November, 2001. It is also not a case of any concealment made by the petitioner while filling his application form before the Commission and this is also undisputed that persons lower in the order of merit in SC category participated along

with him were appointed by the respondent in terms of order dt.14th February, 2005. In my opinion, merely because a FIR was registered against him and after trial there was acquittal which in no manner can constitute to deny appointment to him particularly in view of Rule 13 of the Rules of 1989 which clearly postulates that even conviction by court of law cannot be considered as a sole premise to deprive one of his appointment unless it involves the act of moral turpitude with crimes of violence. In my considered opinion, with-holding appointment of the petitioner in present facts and circumstances was wholly arbitrary and deserves to be set aside.

The writ petition is, accordingly, allowed. The respondents are directed to give appointment to the petitioner as per his placement in the order of merit on the post of Sub-Inspector from the date similarly situated applicants were appointed in terms of order dt.14th February, 2005 [Ann.3]. However, the petitioner will be entitled for seniority and notional fixation of pay, but no arrears will be paid for the intervening period. Compliance of the order be made within two months. No costs.

[Ajay Rastogi],J.

FRB